



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 8, 1992

Mr. Roger Lee
Gibson and Hotchkiss, L. L. P.
912 City National Building
807 8th Street
Wichita Falls, Texas 76301

OR92-381

Dear Mr. Lee:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16246.

Midwestern State University has received a request for "potentially terminal contracts of non-tenured faculty members." As responsive to the request, you have submitted nine "letter notices of term contracts" which, essentially inform the named recipient faculty members that their 1992-1993 contracts "will be for one contract year only" and that the option to renew will lie solely with the university. You assert that the submitted information may be withheld under sections 3(a)(1), 3(a)(3), and 3(a)(11) of the Open Records Act. Having considered the information submitted and your arguments for withholding it, we conclude that the information falls within none of the claimed exceptions to disclosure under the Open Records Act and that consequently it must be released.

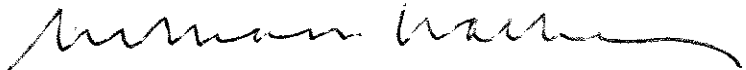
Section 3(a)(1) protects information deemed confidential by statutory or constitutional law or by judicial decision. You claim that the information at issue here is protected by common-law or constitutional privacy. We do not find that any of the information falls within constitutionally protected zones of privacy. *See* Open Records Decision No. 470 (1987) (copy enclosed). Nor, do we find that any of the information satisfies the test for common-law privacy protection since there is presumably a legitimate public interest in it. *See* Open Records Decision No. 455 (1987) (copy enclosed); *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App. -- Austin 1983, writ ref'd n.r.e.).

In connection with your claim under section 3(a)(3), the "litigation exception," you note only that "many faculty non-renewals and terminations are treated as potential litigation." Allegations of the mere possibility of litigation are insufficient to invoke the protection of section 3(a)(3). Open Records Decision No. 437 (1986) (copy enclosed).

Finally, we do not find your section 3(a)(11) claim apposite to the submitted information. Section 3(a)(11) permits withholding of certain intra- and inter-agency memoranda. The test under the exception is whether the information consists of advice, opinion, or recommendation used in the deliberative process. Open Records Decision No. 574 (1990) (copy enclosed). The "letter notices" at issue appear to represent final actions by the university, not "advice, opinion, or recommendation." *Compare* Open Records Decision No. 466 (1987) (evaluations of probationary faculty members fall within section 3(a)(11) protection) copy enclosed.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-381.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

WW/lmm

Ref.: ID# 16246

Enclosure: Open Records Decision No. 437, 455, 466, 470, 574

cc: Mr. Don James
Editor
Times Record News
1301 Lamar
Wichita Falls, Texas 76301